REMARKS

Claims 1-20 are pending. Claim 1 has been amended. Claim 8 has been cancelled without prejudice to or disclaimer of the underlying subject matter. Support for the amended claim can be found throughout the specification and claims as originally filed, for example, in the Specification at page 9, line 20 through page 10, line 2 and claim 8. No new matter enters by way of this amendment. Upon entry of the foregoing amendment, claims 1-7 and 9-20 will be pending.

I. Information Disclosure Statement

Applicants respectfully thank the Examiner for returning the Examiner-initialed copies of Form PTO-1449 filed on May 17, 2005.

II. Rejection under 35 U.S.C. §102

Claims 1-3, 7-13, and 17-20 stand rejected under 35 U.S.C. 102(b) as allegedly anticipated by WO 98/53083. The Examiner asserts that:

> WO 98/53083 teaches a nucleic acid molecule comprising a polypeptide encoding sequence of ACC oxidase and a gene suppression sequence having an inverted repeat of a 5' untranslated region (UTR) (page 7) and is at least 21 nucleotides long (page 9) and transformed into a plant, wherein gene suppression is severe (page 15).

Office Action at page 2.

Applicants respectfully submit that the nucleic acid molecule disclosed in the WO 98/53083 reference fails to disclose all of the limitations of the present claims. "It is axiomatic that for prior art to anticipate under § 102 it has to meet every element of the claimed invention." *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986). For example, the Examiner has not demonstrated that the

cited reference provides for the transcription of a nucleic acid molecule that results in the expression of a polypeptide by a polypeptide encoding sequence and suppression of a gene in a host cell. In addition, the cited reference also does not disclose that the first and second nucleic acid segments are operably linked to a single promoter in a polycistronic configuration. WO 98/53083 might, at best, be argued to discuss constructs and methods for enhancing the inhibition of a target gene within an organism by inserting into the gene silencing vector an inverted repeat sequence of all or a part of a polynucleotide region within the vector. Nowhere does the cited reference disclose or suggest that the vector results in the expression of a polypeptide by a polypeptide encoding sequence and suppression of a gene in a host cell or that the sequences are operably linked to a single promoter in a polycistronic configuration. Absent a showing of each and every element of the claims, the reference cited by the Examiner does not anticipate claims 1-3, 7-13, and 17-20.

Accordingly, for at least the foregoing reasons, the rejection of claims 1-3, 7-13, and 17-20 under 35 U.S.C. § 102(b) is improper. Reconsideration and withdrawal of this rejection is respectfully requested.

III. Rejection under 35 U.S.C. § 103

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over WO 98/53083, taken in combination with Helliwell *et al.* (US 2003/0049835).

The Examiner argues, in full, that

> WO 98/53083 teaches a nucleic acid molecule comprising a polypeptide encoding sequence of ACC oxidase and a gene suppression

> sequence having an inverted repeat of a 5' untranslated region (UTR) (page 7) and is at least 21 nucleotides long (page 9) and transformed into a plant, wherein gene suppression is severe (page 15). WO 98/53083 also teaches that the inverted repeats can be from a coding sequence or 3' UTR (page 5). WO 98/53083 does not specifically teach using a sequence from an intron or inverted repeats.
>
> Helliwell et al teach that intron containing dsRNA increases the efficiency of gene silencing (page 2 at [0018]).

Office Action at page 3.

This rejection is respectfully traversed for at least the reasons which follow. Applicants respectfully submit that the cited references do not teach or suggest all of the claim limitations. As discussed, WO 98/53083, at a minimum, does not disclose or suggest a nucleic acid molecule comprising a first and second nucleic acid segment, where transcription of the nucleic acid molecule in a host results in the expression of a polypeptide and suppression of a gene in a host cell, where the segments are operably linked to a single promoter in a polycistronic configuration.

Helliwell *et al.* does not make up what WO 98/53083 lacks. The Examiner argues that Helliwell *et al.* teaches "that intron containing dsRNA increases the efficiency of gene silencing" Office Action at page 3. Assuming, *arguendo*, that Helliwell discloses "that intron containing dsRNA increases the efficiency of gene silencing," Applicants submit that the Examiner has not pointed to any language in Helliwell *et al.* that discusses that the transcription of the nucleic acid molecule in a host cell results in the expression of a polypeptide by the polypeptide encoding sequence and suppression of a gene in the host cell. As such, even the combination of references cited by the Examiner do not render the claimed invention obvious.

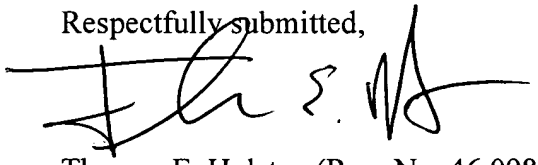
In sum, the Examiner fails to present a *prima facie* case of obviousness as the cited references fail to teach or suggest all of the claim limitations. For at least these reasons, the Applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness, as required by 35 U.S.C. § 103.

Accordingly, for at least the foregoing reasons, the rejection of claims 1-20 under 35 U.S.C. § 103 is improper. Reconsideration and withdrawal of this rejection are respectfully requested.

Conclusion

In view of the above, each of the presently pending claims is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims, and to pass this application to issue. The Examiner is encouraged to contact the undersigned at (202) 942-5085 should any additional information be necessary for allowance.

Respectfully submitted,



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